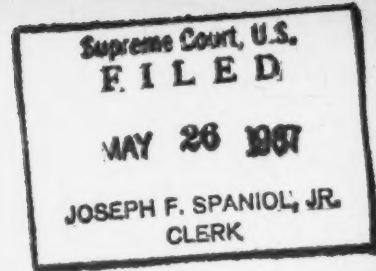


No. 86-1797



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*In the Supreme Court of the United States*

OCTOBER TERM, 1986

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RONALD H. GLANTZ AND ANTHONY J. BUCCI, SR.,  
PETITIONERS

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIRST CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

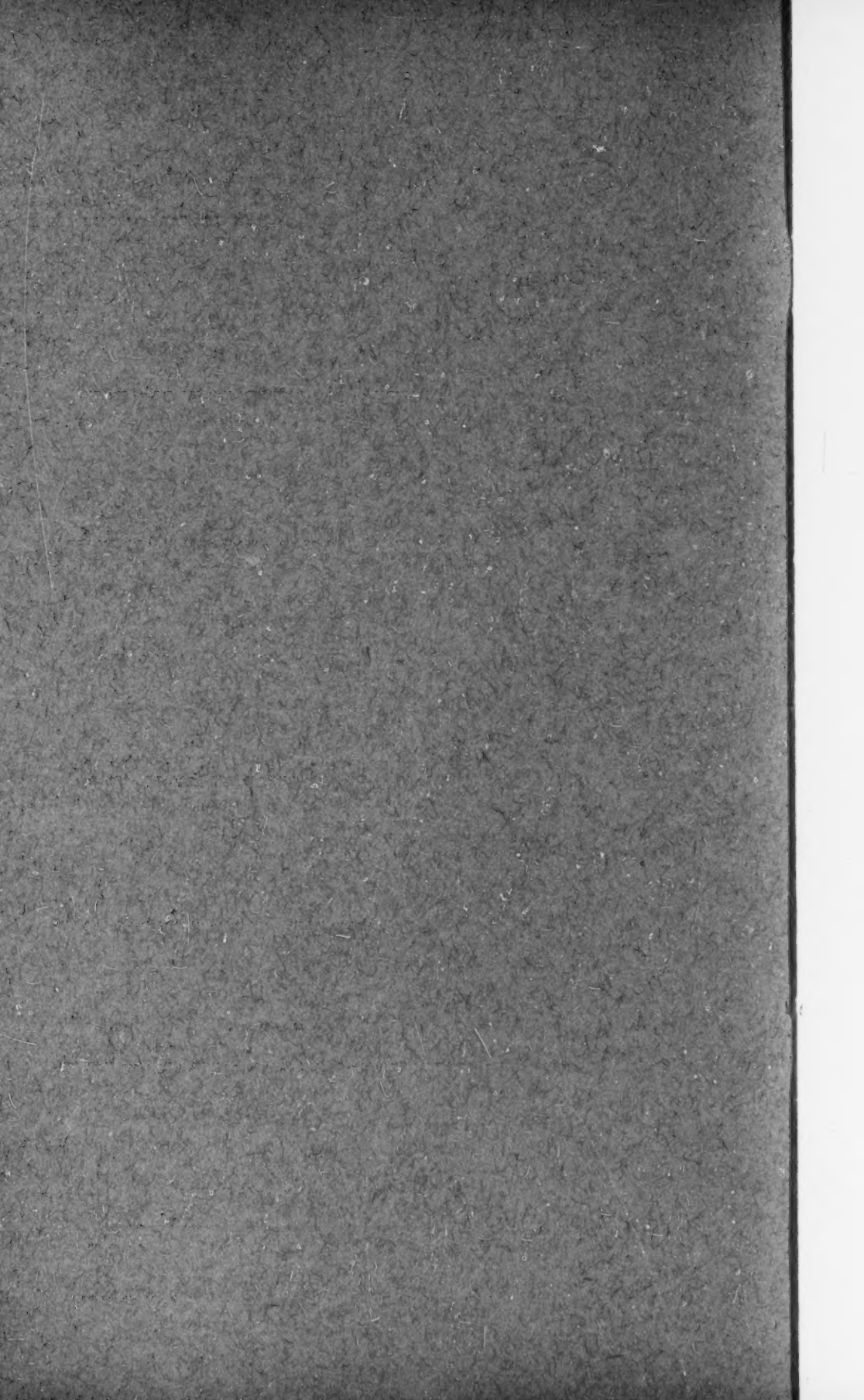
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CHARLES FRIED  
*Solicitor General  
Department of Justice  
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4 pp



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## **MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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Petitioners contend that the court of appeals erred in reversing an order granting a new trial.

Following a jury trial in the United States District Court for the District of Rhode Island, petitioners were convicted of conspiracy to extort kickback payments and of the substantive crime of extorting those payments, in violation of 18 U.S.C. 1951. Petitioner Bucci was also convicted of conspiracy to conceal the kickback scheme from the Internal Revenue Service, in violation of 18 U. S. C. 371; and of preparing two false documents for presentation to the Internal Revenue Service, in violation of 26 U.S.C. 7206(2). On July 2, 1986, the district court granted petitioners' motion for a new trial because of alleged improprieties in the prosecutor's closing and rebuttal arguments.

On February 2, 1987, the court of appeals reversed (Pet. App. 3-21). It concluded that the "substantially appropriate nature of the prosecutor's comments, the repeated correction of any possible deficiencies, and the strong government case all lead to the conclusion that the district court abused its discretion" in ordering a new trial (*id.* at 20).

After the court of appeals' decision, the district court sentenced petitioners. They then noted an appeal of their convictions to the court of appeals. That appeal is now pending. Petitioner Bucci also filed a motion for a new trial on the ground of newly discovered evidence. That motion is now pending in the district court.

Petitioners contend (Pet. 5-9) that the court of appeals erred in not according sufficient deference to the trial court's conclusion that a new trial was warranted. Petitioners also contend (Pet. 9-18) that the court below, although articulating an abuse of discretion standard of review, incorrectly applied a *de novo* standard of review to the trial court's order. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion for a new trial. If the court of appeals were to reverse petitioners' pending appeal from their judgments of conviction and remand for a new trial, their claims might be mooted by an acquittal following a second trial on the merits. If, on the other hand, the court of appeals affirms their convictions, petitioners will then be able to present their present contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of final judgments of

conviction. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.\*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED  
*Solicitor General*

MAY 1987

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\*Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.